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2004 JAN -2 PM 1:34  
NASHVILLE, TENNESSEE

T.R.A. DOCKET ROOM

January 2, 2004

IN RE: BELLSOUTH'S MOTION TO MODIFY )  
STATEMENT OF GENERALLY AVAILABLE )  
TERMS: AMENDMENT TO SELF-EFFECTUATING ) Docket No. 03-00597  
ENFORCEMENT MECHANISMS )  
)

**RESPONSE OF COMPETITIVE CARRIERS OF THE SOUTH, INC.**

Competitive Carriers of the South, Inc. ("CompSouth")<sup>1</sup> files this brief Response to the comments filed on December 22, 2003 by BellSouth Telecommunications, Inc. ("BellSouth").

Although not discussed in BellSouth's comments, motions filed by BellSouth relating to the modification of the SEEM Plan have already been denied in states throughout the region. In fact, no state has yet to rule in BellSouth's favor. On December 9<sup>th</sup>, in Docket 25835(G), the Alabama Public Service Commission, adopting the recommendation of its Staff, denied BellSouth's motion to eliminate line sharing from the Alabama SEEM Plan. BellSouth's motion was also denied in Georgia, as the Georgia Public Service Commission voted on December 16<sup>th</sup> to adopt the Commission Staff recommendation that the motion be denied.

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<sup>1</sup> The members of CompSouth include: Access Integrated Networks, Inc., Access Point Inc., AT&T, Birch Telecom, Cnergy Communications Company, Covad Communications Company, IDS Telecom LLC, ITC^DeltaCom, KMC Telecom, LecStar Telecom, Inc., MCI, Momentum Business Solutions, Network Telephone Corp., NewSouth Communications Corp., NuVox Communications Inc., Talk America Inc., Xspedius Communications, and Z-Tel Communications.

Additionally, on December 15<sup>th</sup>, the Kentucky Public Service Commission issued an Order denying BellSouth's motion to escrow SEEM Plan payments (relating to line sharing penalties) and stated that

The rationale for creating the SEEM performance measures and penalties has not been altered by the Triennial Review Order. BellSouth is still required to provide new line sharing arrangements and maintain existing ones. The payment of penalties on a real-time basis provides appropriate incentives to BellSouth to treat its competitors fairly and compensate those competitors for injuries sustained when service does not meet BellSouth's own predetermined standards.

*In the Matter of: Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996, Order, Case No. 2001-00105 (Issued December 15, 2003) (emphasis added).*

Finally, on November 25<sup>th</sup>, the North Carolina Public Staff filed comments in Docket No. P-100, Sub 133k, opposing BellSouth's motion filed in North Carolina. In opposing the motion, the Public Staff stated the following:

2. The Public Staff believes that BellSouth's motion is premature. In Paragraphs 255-63 of the TRO, the FCC determined that competing local providers (CLPs) were no longer impaired if they did not have unbundled access to the high frequency portion of the loop via line sharing. However in Paragraphs 264-5 of the TRO, the FCC continued to require incumbent local exchange carriers (ILECs) to offer new line sharing arrangements for the next three years at transitional rates derived from each state's current line sharing rates or contained in the parties' interconnection agreement. The FCC also grandfathered all existing line sharing arrangements until the FCC's next biennial review and set the rate as that charged prior to the effective date of the TRO.

3. In Paragraph 267 of the TRO, the FCC explained that transitional rates establish a 'glide path from one regulatory/pricing regime to another' and encourage either the orderly migration of customers to the whole loop or

negotiations between ILECs and CLPs of rates, terms, and conditions for continued access to the high frequency portion of the loop.

4. The Public Staff believes that as long as BellSouth is required by the FCC to offer line sharing, the performance measures and SEEM penalties for line sharing should remain in the plans. As the transition period passes, the number of line sharing arrangements should decline, thereby decreasing the potential for BellSouth to incur penalties. However, to remove the penalties from BellSouth's SEEM Plan for line sharing at this time could disrupt the 'glide path from one regulatory/pricing regime to another' envisioned by the FCC. Moreover, as long as BellSouth continues to offer line sharing during this transition period in a non-discriminatory manner, penalty payments will be unnecessary.

*In the Matter of Generic Docket to Address Performance Measurements and Enforcement Mechanisms*, Comments of the Public Staff, Docket No. P-100, Sub 133k (November 25, 2003) (emphasis added).

As CompSouth previously argued, BellSouth has a continuing line sharing obligation under both the Triennial Review Order and Section 271. Each of the arguments raised by BellSouth in its Reply were addressed earlier by CompSouth and will not be repeated here.

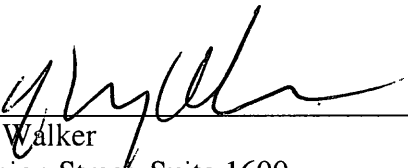
### **Conclusion**

As discussed in CompSouth's earlier filing, there is no legitimate debate about whether line sharing should be categorized as an unbundled network element under Section 271, checklist item number four. The FCC and BellSouth have both categorized line sharing as such in every pleading on the subject. There is also no legitimate debate about whether RBOCs, including BellSouth, must continue to provide non-discriminatory access to checklist items. TRO ¶¶653-667. Manifestly then, BellSouth remains obligated to provide non-discriminatory access to line sharing under both the TRO and Section 271.

That obligation should be enforced, as it always was intended to be, by the SEEM plan. The Authority should, therefore, deny BellSouth's Motion to Modify the SEEM plan as has been done throughout the region.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Response of Competitive Carriers of the South, Inc. has been furnished by U.S. Mail this 2nd day of January, 2004:

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A handwritten signature in black ink, appearing to read 'H Walker', written over a horizontal line.

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